

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

LISA TRACEY,

Plaintiff,

vs.

ST. JUDE MEDICAL, INC.,

Defendant.

8:14CV198

ORDER

This matter is before the court on two motions to compel filed by the plaintiff, Lisa Tracey (Tracey). Tracey seeks complete personnel files of two of St. Jude Medical, Inc.'s (St. Jude) employees, arguing such employees are Tracey's comparators. **See** Filing No. 171. Additionally, Tracey seeks records about her kept in an unofficial file. **See** Filing No. 180. The parties completed briefing for both motions.

Tracey alleges St. Jude wrongfully terminated her from her job at St. Jude as a Senior Technical Sales Specialist after she opposed and reported unlawful billing activities. **See** Filing No. 1 - Complaint. Specifically, Tracey alleges she opposed fraudulently billing a patient for a medical device in order to provide such device, free of charge, to a different patient and other false purchase orders. *Id.* ¶¶ 30-42. Tracey asserts St. Jude retaliated against her in violation of the Nebraska Fair Employment Practices Act (NFEPA) and Nebraska public policy. *Id.* ¶¶ 29-49. St. Jude denies fraudulent billing activity and denies terminating Tracey's employment because of her opposition to alleged fraudulent activity. **See** Filing No. 12 - Answer.

The current discovery dispute stems from requests for production of documents Tracey served on November 13, 2014 (first set), and February 6, 2015 (second set). **See** Filing Nos. 18 (Notice of Service) and 172 (Brief explaining service dates). St. Jude provided responses and objections on December 18, 2014, and March 19, 2015, respectively. **See** Filing Nos. 25 and 33. During a deposition conducted on October 10, 2015, Tracey discovered personnel documents about her may exist in an unofficial file, which would be responsive to the first set of requests. On October 23, 2015, St. Jude produced documents, noting it limited its response to non-privileged, relevant, and

responsive records “from 2012 and 2013.” In June of 2016, Tracey’s counsel contacted St. Jude’s counsel about perceived deficiencies in the above discovery responses.

Tracey’s motions to compel, filed on June 21, 2016, and July 1, 2016, will be denied because they are untimely. On July 14, 2015, the court entered a scheduling order with the provision: “Discovery motions shall be filed not later than **January 1, 2016**, as to matters which are then ripe for decision; discovery matters arising after that date may be the subject of motions until the deposition deadline.” **See** Filing No. 72. The court later extended the discovery deadline to July 29, 2016. **See** Filing No. 154. Furthermore, the pretrial conference is scheduled for August 19, 2016, with trial to follow on September 19, 2016. *Id.*

Federal Rule of Civil Procedure 16(b)(4) requires a party show good cause justifying any modifications to a scheduling order. **See** Fed. R. Civ. P. 16(b); **Bradford v. DANA Corp.**, 249 F.3d 807, 809-10 (8th Cir. 2001); **see also Thorn v. Blue Cross & Blue Shield of Fla., Inc.**, 192 F.R.D. 308, 309 (M.D. Fla. 2000) (“In demonstrating good cause, the moving party must establish that the ‘scheduling deadlines cannot be met despite a party’s diligent efforts.’”) (paraphrasing Fed. R. Civ. P. 16 advisory committee notes (1983 amendment)). Tracey provides no explanation for the delay between her receipt of discovery responses on March 19, 2015 (second set) and learning of potential deficiencies in responses on October 23, 2015 (first set) and her eventual contact, in June 2016, with St. Jude about allegedly deficient production. Tracey fails to provide good cause, or any justification whatsoever, for the inadequate review and preparation of the disputed discovery, particularly in light of the previous lengthy discovery-related delays and nearness of trial. Accordingly,

IT IS ORDERED:

Lisa Tracey’s motions to compel non-party employee personnel records (Filing No. 171) and her unofficial personnel records (Filing No. 180) are denied.

Dated this 5th day of August, 2016.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge